Esah bte Ishak (a mother and legal dependant of Nazri bin Ahmad Ramli, deceased) & Anor v Kerajaan Malaysia & Anor

HIGH COURT (IPOH) — CIVIL APPEAL NO 12–17 OF 2004
BALIA YUSOF J
15 AUGUST 2006

Damages (Personal Injury or Death) — Fatal accident — Dependency claim — Appeal against quantum of damages awarded by sessions court — Whether grandparents could also make a claim for loss of support — Civil Law Act 1956 ss 7(2), (11)

The plaintiffs/appellants appealed against the decision of the learned sessions judge against the quantum of damages awarded to them. The award was made on the basis of 100% liability on the respondents. It was submitted by the learned counsel for the appellants that the figure RM400 arrived at by the learned sessions judge is erroneous and unsupported by evidence and that the learned sessions judge has erred in awarding the multiplier of seven years in relying on the decision of the supreme court in *Chan Chin Meng v Lim Chong Eng* [1994] 3 MLJ 233. In her grounds of judgment, the learned sessions judge had found that both the first and second appellant respectively, received RM1,000 per month as support from their deceased sons. For the first appellant, beside herself and her two other children, the said contribution was also used to support her ailing parents and being a widow, she relied solely on the contribution of RM1,000 from her deceased son. As for the second appellant, it was established that the said contribution of RM1,000 per month from her deceased son was for the support of herself, her husband, her four other children and as well as her mother that was the grandmother of the deceased. The learned sessions judge held that under s 7(2) of the Civil Law Act 1956 only the father and mother of the deceased could make a claim for the loss of support.

Held:

(1) The learned sessions judge had misdirected herself on the point of law in failing to consider the provisions of s 7(2) and (11) of the Civil Law Act 1956 and this had to be corrected. The sessions judge had also failed to take any or any sufficient account of the uncontradicted evidence of the appellants with regard to the dependants of the deceased. There was no judicial appreciation of that evidence (see para 19).

(2) The sum of RM800 was a reasonable figure taking into consideration that the grandparents of the deceased were also the dependants in this case. Both the appellants had stated in their statement of claim filed in the court below that they brought the action 'untuk faedah diri sendiri dan orang-orang tanggungan lain simati di bawah peruntukan Akta Undang-Undang Sivil 1956 dan khususnya ss 7 dan 8 Akta berkenaan' (see para 8). In substituting the amount

RM400 per month with RM800 per month for the first appellant, would be a reasonable amount for the support of the first appellant herself as well as the ailing grandparents of the deceased, while for the second appellant the same amount was reasonable for her support as well as for the support of the father and the grandmother of the deceased (see para 11).

(3) In conformity of the maxim *stare decisis et non quieta movere*, the learned sessions judge's reliance on the case of *Chan Chin Meng* in awarding the multiplier of seven years to the appellants in the instant appeal was faultless. The discretion still lies with her in determining the number of years' purchase (or multiplier) by taking into account the contingencies and circumstances of the case (see para 25).

[Bahasa Malaysia summary

Plaintif-plaintif/perayu-perayu merayu terhadap keputusan hakim sesyen yang bijaksana terhadap kuantum ganti rugi yang diaward kepada mereka. Award itu berdasarkan 100% liabiliti pada pihak responden-responden. Peguamcara perayu-perayu menghujahkan jumlah RM400 yang diputuskan oleh hakim sesyen yang bijaksana adalah silap dan tidak disokong oleh sebarang bukti dan juga bahawa hakim sesyen yang bijaksana telah silap memberi award pendarab tujuh tahun berdasarkan keputusan mahkamah agung di dalam kes *Chan Chin Meng v Lim Chong Eng* [1994] 3 MLJ 233. Dalam alasan penghakimannya, hakim sesyen yang bijaksana telah mendapati bahawa kedua-dua perayu pertama dan kedua masing-masing, menerima RM1,000 sebulan sebagai sumbangan daripada anak-anak mereka yang telah meninggal. Untuk perayu pertama, selain daripadanya dan dua lagi anak, sumbangan tersebut juga digunakan untuk menanggung kedua-dua ibu bapanya yang telah uzur dan sebagai seorang balu, dia bergantung sepenuhnya terhadap sumbangan RM1,000 daripada si mati. Untuk perayu kedua, telah dipastikan bahawa sumbangan sebanyak RM1,000 sebulan daripada si mati ialah untuk tanggungan diri sendirinya, suaminya dan empat lagi anak-anaknya dan juga ibunya iaitu nenek si mati. Hakim sesyen yang bijaksana telah memutuskan di bawah s 7(2) Akta Undang-Undang Sivil 1956, hanya bapa dan ibu kepada si mati boleh menuntut untuk kehilangan tanggungan.

Diputuskan:

(1) Hakim sesyen yang bijaksana telah salah arah dirinya atas perkara undang-undang dengan kegagalan beliau menimbang peruntukan-peruntukan s 7(2) dan (11) Akta Undang-Undang Sivil 1956 dan ini mesti diperbetulkan. Hakim sesyen yang bijaksana juga gagal mengambil perhatian akan bukti-bukti yang tidak dipertikaikan oleh perayu-perayu berhubung dengan tanggungan si mati. Tiada pertimbangan kehakiman terhadap bukti tersebut (lihat perenggan 19).

(2) Jumlah RM800 adalah amaun yang munasabah setelah mempertimbangkan datuk dan nenek si mati juga merupakan tanggungan dalam kes ini. Kedua-dua perayu-perayu telah menyatakan di dalam pernyataan tuntutan mereka yang difailkan di mahkamah di bawah bahawa mereka telah

mengambil tindakan tersebut 'untuk faedah diri sendiri dan orang-orang tanggungan lain si mati di bawah peruntukan Akta Undang-Undang Sivil 1956 dan khususnya ss 7 dan 8 Akta berkenaan' (lihat perenggan 8). Dalam menggantikan amaun RM400 sebulan dengan RM800 sebulan untuk perayu pertama, adalah munasabah untuk menanggung diri perayu pertama dan juga datuk neneknya yang telah uzur, sementara untuk perayu kedua, jumlah yang sama adalah munasabah untuk menyokong dirinya dan juga menanggung ayah dan nenek si mati (lihat perenggan 11).

(3) Dalam mengikut maxim *stare decisis et non quieta movere*, hakim sesyen yang bijaksana bergantung kepada kes *Chan Chin Meng* ketika mengawardkan pendarab tujuh tahun kepada perayu-perayu di dalam rayuan ini adalah tepat. Beliau masih mempunyai budi bicara menentukan belian tahun (atau pendarab) dengan mengambil kira kontingensi dan keadaan kes (lihat perenggan 25).]

Notes

For cases on dependency cliam, see 6 *Mallal's Digest* (4th Ed, 2004 Reissue) paras 343–374.

Cases referred to

Cassell & Co Ltd v Broome & Anor [1972] 2 WLR 645 (refd)
Chan Chin Meng v Lim Chong Eng [1994] 3 MLJ 233 (refd)
Cheng Bee Teik & Ors v Peter a/l Selvaraj & Anor [2005] 4 MLJ 301 (refd)
Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd [1997] 2 MLJ 829 (refd)
Davies v Powell Duffryn Associated Collieries Ltd [1942] AC 601 (refd)
Eng Thye Plantations Bhd v Lim Heng Hock & Ors [2001] 4 MLJ 26 (refd)
Hoi Seng v Ooi Pay Yeong [1995] 4 MLJ 670 (refd)
Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal [2004] 1 MLJ 525 (refd)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/I K Perumal [2001] 2 MLJ 417 (refd)
Mohd Ali bin Alang Ibrahim lwn Robiah bte Che Lam [1995] MLJ 343 (refd)
PP v Datuk Tan Cheng Swee & Anor [1980] 2 MLJ 276 (refd)
Periasamy s/o Sinnapan & Anor v PP [1996] 2 MLJ 557 (refd)
Phang Ah Chee v Chong Kwee Sang [1975] 1 MLJ 153 (refd)
Sivalingam a/I Periasamy v Periasamy & Anor [1995] 3 MLJ 395 (refd)
Tan Cheong Poh & Anor v Teoh Ah Kow [1995] 3 MLJ 89 (refd)
Topaiwah v Salleh [1968] 1 MLJ 284 (refd)
Wilson v Pillay [1957] 3 All ER 525 (refd)
Woon Ngee Yew & Ors v Ng Yoon Thai & Ors [1941] MLJ 32 (refd)

Legislation referred to

Civil Law Act 1956 ss 3A, 3B, 7(2), (3)(iv)(d), (11)

Ranjit Singh (Ranjit Singh & Co) for the appellant.
Pretam Singh a/l Darshan Singh (Senior Federal Counsel) (Normastura bte Ayub with her)(Federal Counsel) for the respondent.

Balia Yusof J:

[1] The appellants who were the plaintiffs in the court below brought this appeal against the decision of the learned sessions judge against the quantum of damages awarded to them. The award was made on the basis of 100% liability on the respondents.

[2] The appeal is premised on the ground that the multiplicand of RM400 as found by the learned sessions judge has no basis and unsupported by evidence and further that the learned sessions judge has erred in awarding the multiplier of seven years in relying on the decision of the Supreme Court in *Chan Chin Meng v Lim Chong Eng* [1994] 3 MLJ 233.

[3] Before the learned sessions judge, both parties agreed that special damages in the sum of RM13,580 be awarded to both the appellants. However, at the out set of the appeal, it was agreed that the said sum be reduced to RM3,580 by deducting the sum of RM10,000 being damages for bereavement, which the appellants are not entitled to pursuant to ss 3A and 3B of the Civil Law Act 1956 (see *Hoi Seng v Ooi Pay Yeong* [1995] 4 MLJ 670 and *Mohd Ali bin Alang Ibrahim lwn Robiah bte Che Lam*; [1995] MLJU 343). On that premise, I accordingly ordered that the award for special damages be reduced to RM3,580 as agreed.

[4] Reverting to the main ground of the appeal, it was submitted by the learned counsel for the appellants that the figure RM400 arrived at by the learned sessions judge is erroneous and unsupported by evidence. In her grounds of judgment, the learned sessions judge has found that both SP2 and SP3 that is the first and second appellant respectively, received RM1,000 per month as support from their deceased sons. For both appellants, the said sum of RM1,000 is used not only to support themselves but also the grand parents of the deceased. For the first appellant, beside herself and her two other children, the said contribution is also used to support her ailing parents and being a widow, she relied solely on the contribution of RM1,000 from her deceased son. As for the second appellant, it was established that the said contribution of RM1,000 per month from her deceased son is for the support of herself, her husband, her four other children and as well as her mother that is the grandmother of the deceased. In her judgment, the learned sessions judge concluded that the first appellant is only entitled to an amount which is she spent on herself and came to the conclusion that the sum of RM400 per month is reasonable for her upkeep. Similarly she also awarded the same amount of RM400 per month being the loss of support for the second appellant. She further held that under s 7(2) of the Civil Court Act 1956 only the father and mother of the deceased could make a claim for the loss of support.

[5] It is the contention of appellants that the decision of the learned sessions judge in awarding RM400 as the loss of support is not supported by evidence or rather against the evidence adduced by the appellants. Her decision is also tainted as being contrary to the provisions of sub-sse (2) and (11) of ss 7 of the Civil Law Act 1956. The learned senior federal counsel has graciously conceded on this issue and was

certainly right in doing so. Reading sub-ss (2) and (11) of s 7 of the Civil Law Act 1956, the learned sessions judge has erred in law in holding that only the father and mother of the deceased, could make a claim for loss of support in the instant case.

[6] For the sake of completeness, sub-ss (2) and (11) of the abovementioned provision read as follows:

[7] Compensation to the family of a person for loss of occasioned by his death.

7(1) ...

7(2) Every such action shall be for the benefit of the wife, husband, parents, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

7(11) In this section unless the context otherwise requires.

— 'child' includes son, daughter, grandson, granddaughter, stepson and stepdaughter; 'parents' includes father, mother, grandfather and grandmother;

'pension' includes a return of contributions and any payment of a lump sum in respect of a person's employment:

Provided that in deducting any relationship referred to in this subsection any illegitimate person or any person who has been adopted, or whose adoption has been registered, in accordance with any written law shall be treated as being or as having been the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

[8] Having considered the evidence adduced by both the appellants in this case, I am inclined to accept the view of the learned counsel for the appellants that the sum of RM800 per month as suggested is a reasonable figure taking into consideration that the grandparents of the deceased are also the dependants in this case. Both the appellants has stated in their statement of claim filed in the court below that they brought the action 'untuk faedah diri sendiri dan orang-orang tanggungan lain simati di bawah peruntukan Akta Undang-Undang Sivil 1956 dan khususnya ss 7 dan 8 Akta berkenaan' — unquote.

[9] Edgar Joseph Jr SCJ in his judgment in Chan Chin Meng's case commented on persons entitled to a claim for loss of support as follows:

> In my view, the plain, ordinary and grammatical meaning of the expression 'any loss of support suffered appearing in s 7(3), must refer to the loss of support suffered by the *party for whom and for whose benefit the action is brought*'. In other words, the loss suffered must be personal to the class of defendants specified in S.7(2) so that a loss suffered by any other person not falling within that class must be excluded. (Emphasis added.)

[10] The grandparents of the deceased and the husband of the second appellant (ie the father of one of the deceased) are the 'the party for whom and for whose benefit the action is brought' and they are dependants of the deceased as specified in s 7(2) and (11) of the Civil Law Act 1956.

[11] In substituting the amount RM400 per month to RM800 per month for the first appellant, I am of the view that such would be a reasonable amount for the support of the first appellant herself as well as the ailing grandparents of the deceased, while for the second appellant the same amount I also deem it to be reasonable for her support as well as for the support of the father and the grandmother of the deceased. Both the appellants gave evidence in the lower court that the contribution made by their deceased sons was also meant for the support of both the grandparents and parents.

[12] This piece of evidence supports the claim and the averments of the appellants as stated in paras 1 and 2 of their statement of claim which I have quoted and reproduced in part earlier.

[13] Interference by an appellate court with an award of damages by the trial judge must be a rare thing, so observed the great judge Lord Evershed MR in the case of *Wilson v Pillay* [1957] 3 All ER 525. Our Federal Court in the case of *Topaiwah v Salleh* [1968] 1 MLJ 284 has stated that:

> So far as this court is concerned we should, to paraphrase Greer LJ in *Flint v Lovell* be disinclined to reverse the finding of a trial judge as to the amount of damages merely because we think that if we had tried the case in the first instance we would have given a lesser sum. To justify reversing him, we should be convinced that he acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damage.

[14] Appellate courts are always slow to interfere with the trial judge's decision on assessment of damages unless there is shown strong grounds for such interference (see *Phang Ah Chee v Chong Kwee Sang* [1975] 1 MLJ 153) and it is also trite law that the appellate court should not give preference to its own figure simply because they disagree with the figure arrived as by the trial judge. It will only interfere if it is satisfied that the trial judge has acted on a wrong principle of law or has for other reasons made a wholly erroneous estimate of the damage suffered — *Tan Cheong Poh & Anor. v Teoh Ah Kow* [1995] 3 MLJ 89.

[15] Perhaps it would not be superfluous as this stage to quote what Lord Wright has stated on the principle upon which an appellate court will interfere with an award of damages made by a judge sitting alone. In *Davies v Powell Duffryn Associated Collieries Ltd* [1942] AC 601 as pp 616–617, his Lordship stated as follows:

> Where the award is that of a judge alone, the appeal is by way of rehearing on damages as on all other issues, but there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly show to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer LJ in *Flint v Lovell*. In effect the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess of insufficiency.

[16] Apart from the issue of interference with an award of damages, I deem it necessary to dwell further on the issue of the powers and duties of this court in dealing with appeals before it.

[17] Time and again we need to remind ourselves that an appellate court should be very loath to differ on a finding by a court which has. seen and heard the witness. But if the trial court can be shown to have misdirected itself on the evidence, or to have rejected evidence for a wrong reason or to have drawn an inference from evidence which was equally capable of supporting a different inference it may very well be the duty of the appellate court to interfere (see *Woon Ngee Yew & Ors v Ng Yoon Thai & Ors* [1941] MLJ 32). In *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395, the Court of Appeal observed that the appellate court will not readily interfere with the findings of fact arrived at by the court of first instance to which the law entrusts the primary task of evaluation of the evidence. But when the trial court has so fundamentally misdirected itself that one may safely say that no reasonable court which had properly directed itself and asked the correct question would have arrived at the some conclusion, the appellate court is under a duty to so intervene. On a similar issue, the Court of Appeal in *Eng Thye Plantations Bhd v Lim Heng Hock & Ors* [2001] 4 MLJ 26, even went further to say that it would be an abdication of an appellate court's proper responsibility if it did not intervene and set right decision of trial courts that are plainly wrong or unjust.

[18] From my perusal of the record of appeal and having heard the submissions of both counsel for the appellants and the learned senior federal counsel, I am constrained to hold that this is one case where this court will not hesitate to interfere with the decision of the learned sessions judge in the assessment and award of damages.

[19] The learned sessions judge has misdirected herself on the point of law in failing to consider the provisions of s 7(2) and (11) of the Civil Law Act 1956 and this has to be corrected. The sessions judge has also failed to take any or any sufficient account of the uncontradicted evidence of the appellants with regard to the dependants of the deceased. There is no judicial appreciation of that evidence. On those premises, I substitute the finding of the learned sessions judge on the award of damages in the terms as set out in the earlier part of my judgment.

[20] There is also another aspect of this appeal touching on the celebrated case of *Chan Chin Meng v Lim Chong Eng*. Relying on the majority decision of the Supreme Court, the learned sessions judge allowed a multiplier of seven years instead of sixteen years as provided in s 7(3)(iv)(d) of the Civil Law Act 1956. Both the deceased in this case were nineteen years of age at the time of death and unmarried. The learned sessions judge has estimated that should they be alive, they would have married in seven years time after taking into account the contingencies and circumstances of the case. Learned counsel for the appellants contends that the multiplier should be 16 years as provided for in the Act and urged this court to follow the dissenting judgment of Edgar Joseph Jr SCJ in the said case. Learned counsel for the appellants further referred to me two other decisions of the Court of Appeal namely, *Ibrahim Ismail & Anor v Hasnah Puteh Imat & Anor and Another Appeal* (2004) 1 CLJ 797

and *Cheng Bee Teik & Ors v Peter Selvaraj & Anor* [2005] 2 CLJ 839. The learned senior federal counsel, appearing for the respondents on the other hand submitted that the case of *Chan Chin Meng* ought to be followed and is binding upon this court.

[21] The maxim *stare decisis et non quieta movere* — to stand by decisions, and not to disturb settled matters, forms an integral part of our judicial system and as such it is worth reminding ourselves that the decisions of the Superior Courts are strictly binding on the lower courts. As aptly put by Chang Min Tat FJ in *Public Prosecutor v Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 at p 277:

> It is necessary to reaffirm the doctrine of stare decisis which the Federal Court accepts unreservedly and which it expects the High Court and other inferior courts in a common law system such an ours, to follow similarly. The doctrine of stare decisis requires more than lip service.

[22] Lord Hailsham in *Cassell & Co Ltd v Broome & Anor* [1972] 2 WLR 645 gave a reminder as follows:

> The fact is, and I hope it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where the decisions manifestly conflict, the decision in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom.

[23] The above quoted passage by Lord Hailsham has received full approval by our Federal Court in such cases like *Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd* [1997] 2 MLJ 829 and *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal*; [2001] 2 MLJ 417, where at page 448 Abdul Malek Ahmad FCJ stated:

> All things considered, we would venture to say that this court may have fallen into errors in granting leave on the second question. Especially so when it has been decided in *Co-operative Central Bank Ltd (In receivership) v Feyen Development Sdn Bhd* [1997] 2 MLJ 829 that it was necessary for each lower tier to accept loyally the decision of the higher tiers and chaotic consequences would follow should the lower tier fail in his duty. It was therefore not open to an intermediate court of appeal, such as the Court of Appeal in the country, to disregard a judgment of a final court of appeal such as the Federal Court on the ground that it was given per in curium.

[24] The need for an orderly development of legal rules and certainty of the law requires strict observance of the doctrine of stare decisis, and to borrow the words of Chang Min Tat FJ, it requires more than lip service. As judges of the inferior and lower tier courts, our hands are tied and are always bound by this doctrine of stare decisis. We are guided and constantly reminded by the strong words of his Lordship Gopal Sri Ram JCA who in *Periasamy s/o Sinnapan & Anor v PP* [1996] 2 MLJ 557 cautioned in the fashion as follows:

> We may add that it does not auger well for judicial discipline when a High Court Judge treats the decision of the Supreme Court with little or no respect in disobedience to the well

entrenched doctrine of stare decisis. We trust that the occasion will never arise again when we have to remind High Court Judges that they are bound by all judgments of this Court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein (see Mirehouse v Rennell 6 ER 1015, *Cooper v Southern Portland Cemai Ltd* (1972) 46 AJLR 302, *Cassell & Co Ltd v Broome & Anor* [1972] AL 1027, *Miliangos v George Frank (Textiles) Ltd* [1975] 2 WLR 555 at p 564, *PP v. Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 at p 277, *Kathavarayan v Ng Sup Moi & Anor* [1987] 1 MLJ 246 at p 250, *Co-operative Central Bank Ltd (In receivership) v Feyen Development Sdn Bhd* [1977] 2 MLJ 829 at pp 836–837, *Dalip Bhagwan Singh v PP* [1998] 1 MLJ 1 and *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi a/l K Perumal* [2001] 2 MLJ 417).

[25] In conformity with the above stated principle and reasons, I hold that the learned sessions judge's reliance on the case of *Chan Chin Meng* in awarding the multiplier of seven years to the appellants in the instant appeal is faultless. The discretion still lies with her in determining the number of years' purchase (or multiplier) by taking into account the contingencies and circumstances of the case. On the facts of the case presented, there is nothing distinguishable from the facts in *Chan Chin Meng* and coincidentally the facts of this appeal are almost if not wholly similar with the facts in *Chan Chin Meng*, namely a claim made by a dependent of an unmarried deceased person.

[26] In the result, this appeal is therefore allowed to the extent that the future loss of support be increased to RM800 per month with a multiplier of seven years and the award of RM10,000 for bereavement be set aside and special damages in the sum of RM3,580 be awarded to both the appellants as agreed. Costs to the appellants.

Order accordingly.

Reported by Sally Kee